

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the Center for Advanced Public Awareness (“CAPA”) and Coastal Cocktails, Inc., dba Modern Gourmet Foods (“CCI”), with CCI and CAPA each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction and General Allegations.

1.2.1 CAPA is a company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 CAPA alleges that CCI employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 CAPA alleges that CCI imported, sold, and/or distributed for sale in California, products containing lead, a listed chemical pursuant to Proposition 65 identified by the State of California to cause cancer and reproductive toxicity, and failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its products specifically the Corona Glass Set, which CAPA alleged leached lead from the lip and rim area.

1.3 Product Description.

The products covered by this Settlement Agreement are the Corona Glass Sets, which was imported, sold and/or distributed for sale in California by CCI and/or other retailers with UPC# 400160584769 (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On July 16, 2018, CAPA served CCI, Ross Stores, Inc. (“Ross”), and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that CCI had violated Proposition 65. The Notice alleged that CCI had failed to warn its customers and

consumers in California of the health hazards associated with exposures to lead from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided CCI with test results in CAPA's possession concerning its allegations. CCI provided CAPA with sales data related to the Covered Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission.

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute"). Specifically, CAPA alleges that CCI imported, sold or distributed for sale in the state of California the Covered Products, which contained lead in the lip and rim area without first providing the clear and reasonable exposure warning required by Proposition 65. CCI denies that such a warning is required under Proposition 65 or any otherwise applicable law.

CCI further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CCI of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CCI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CCI. However, this section shall not diminish or otherwise affect CCI's obligations, responsibilities, and duties hereunder.

1.6 Effective Date.

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 25, 2019.


2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1 Reformulation Standard. Commencing on the Effective Date, and continuing thereafter, Covered Products that are imported, manufactured and/or sold or offered for sale or

purchase for sale in or into California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to lead if they meet the standard of “Reformulated Products.” “Reformulated Products” shall mean that they comply with the standards set forth in the *Brimer v. The Boelter Companies*, San Francisco Superior Court, Case No. CGC-05-440811 Consent Judgment (“Boelter CJ”). Covered Products currently in the channels of distribution with distributors and retailers may be sold through.

2.2 Warning Option. Covered Products that do not meet the Boelter CJ standards set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that CCI sells or ships to consumers, retailers, or distributors located in California after the Effective Date. No Proposition 65 warning for lead shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 Warning Language. Where required to meet the criteria set forth in Section 2.2, CCI shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when CCI distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, CCI shall provide the following warning statement conspicuously on the unit packaging.

 **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

 **[California Proposition 65] WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

The warning shall be preceded by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline, or where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE§ 25249.7(b)

CCI shall pay a civil penalty of \$1,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CAPA. CCI shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$750, representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for CAPA," in the amount of \$250, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to the Kawahito Law Group, who shall furnish a W-9 at least five days prior to the due date for payment. The two checks shall totaling \$1,000 shall be sent on or before February 10, 2019 to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Sepulveda, Blvd. Suite 2222
El Segundo, CA 90245

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, CCI shall pay the total amount of \$18,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of CCI, and negotiating a settlement. CCI shall make the check payable to "Kawahito Law Group APC" and shall deliver payment on the following schedule. The payment of \$18,000 shall be made on or before February 10, 2019 by check or wire transfer to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. CCI
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

Information for wire transfer will be furnished upon request.

The Kawahito Law Group, who shall furnish a W-9 at least five days prior to the due date for payment.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

This Settlement Agreement is a full, final and binding resolution between CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees ("Releasors"), on the one hand, and CCI, Ross, and their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, and each entity to whom and/or CCI directly or indirectly distributes or sells the Covered Products, including but not limited to CCI's distributors, retailers, wholesalers, customers, marketplace hosts, and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been asserted by CAPA against CCI based on the alleged failure to warn about alleged exposures to lead contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by CCI (either directly or through any of the Releasees) in California before the Effective Date. This release is provided in CAPA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation fees, expert fees and attorneys' fees -- arising with respect to CCI's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

CAPA acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE

TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CAPA, its past and current agents, representatives, attorneys, successors, and/or assignees, in its individual and not representative capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of, Civil Code § 1542 with respect to the Covered Products, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

5.2 CCI's Release of CAPA

CCI on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For CCI:

Leslie Krasny

Keller and Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111

For CAPA:

James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. CCI
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

CAPA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date:

By: _____

Center for Advanced Public Awareness

AGREED TO:

Date:

January 29 '19

By: _____


Coastal Cocktails, Inc.